Nada Smith

A. So it could be five minutes to two hours, tops, like I said.

Q. Are you aware of anyone at the dealership ever telling a customer, "Now that you've signed the purchase, if you back out of the deal you're going to lose some percentage of your deposit"?

A. No.

Q. As far as you know, the policy for New York Motor Group was to refund 100 percent of the deposit, as long as they hadn't actually purchased the car yet?

A. I always refunded. And I got my father's approval -- I'll call him, "Hey, this customer came in to look at this car, put down the money, but he's not interested anymore. Can I give him a refund back?" "Sure, how much is it for? Did it go into the account yet? Did it not?" And that's how it would go.

Q. What if it had already gone into the account; would you still be able to refund it?

A. Yes, I would give him a check from our account.

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Q. From your account, okay.
Would you provide refunds for as much as five to ten, fifteen thousand dollars?
A. If that's what the client gave, I would write them a check from the New York Motor Group account, yes.
Q. Was it common to refund as much as $10,000?
A. No. That's a very large number.
Q. What were the refunds usually like, roughly?
A. Just like $200, $500, small. Mostly the refunds that I had received. They were mostly vehicles that were being held. But, like, the large amounts, the most that I had refunded back was probably like, I don't remember too well, but it was nothing in the ten thousands. It was like the low, like under five thousand.
Q. Do you remember if that was a check written from --
A. It was written from --
Q. -- the dealership's account?
A. -- the New York Motor Group.

Nada Smith

Q. So money had already been deposited?

A. Yes. Any money for the downpayments always went into the New York Motor Group accounts, and any refund that was given back to the client was written out of the New York Motor Group account -- that I was aware of. This, I wasn't aware of.

Q. You don't recognize Exhibits 9, 10 and 11 at all?

A. No.

Q. Again, I just want to clarify, because I know Mr. Keshavarz asked about this and now I've just asked about it and I want to make sure I've got this straight.

It was possible for a customer to get a full refund, as long as nothing had been funded by a bank?

A. Correct. I had to think about it, sorry.

Q. I understand. I appreciate it, thank you. It's late, I know.

MR. LANE: I don't think I have any further questions.

I'm going to pass the witness to Ms. Lindermayer.

MS. LINDERMAYER: I would like to mark these as 12, 13 and 14.

(Three one-page documents entitled "Retail Certificate of Sale" are marked as Plaintiff's Exhibits 12, 13 and 14 for identification, as of this date.)

MR. SIMON: I think I could explain these to you.

MS. LINDERMAYER: It's okay, I don't need you to explain them to me, thank you.

MR. SIMON: She may not know.

MS. LINDERMAYER: I'll ask the questions and see what she knows.

EXAMINATION BY MS. LINDERMAYER:

Q. Hi, I'm Ariana Lindermayer. I'm one of the attorneys for Mr. Tuhin. I just want to show you the first document. It's Plaintiff's Exhibit 12.

Before, you had testified about floor planning. It seemed like you knew a lot

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about that subject. Was floor planning something that you dealt with at New York Motor Group?

A. Here and there. It wasn't something that I dealt with on a regular basis.

Q. On that document that I just handed you, marked Plaintiff's Exhibit 12, do you recognize your handwriting on this document?

A. Yes.

Q. Is your signature on that document?

A. Yes.

Q. Where is your signature?

A. Where it says, "New York Motor Group."

Q. Under "Dealer"?

A. Dealer's signature.

Q. It's under the "Certification." Can you just start reading that Dealer Certification for the record?

MR. SIMON: Do you want me to read it?

MS. LINDERMAYER: No.

Nada Smith

A. "The vehicle described above was sold to the purchaser on the date indicated. At the time of delivery the purchaser was entitled to register the vehicle. This vehicle complied with exempt" -- I'm sorry, I can't, it's not clear.

Q. Just for timing purposes, that's all. That was the only part that was relevant.

A. Okay.

Q. So don't worry about it.

Did you understand that you were certifying -- that by signing this, you were certifying that the information contained in this Retail Certificate of Sale was correct?

A. Yes.

Q. Can I have that Exhibit back?

A. Mm-hmm.

Q. This is something I have marked as Plaintiff's Exhibit 13. Do you recognize your handwriting on that Retail Certificate of Sale?

A. Yes.

Q. Is your signature anywhere on that?

A. Yes.

Nada Smith

Q. Where is your signature located?
A. Where it says "Purchaser."
Q. Just for the record, can you name who on Exhibit 13 is listed as the prior owner of the vehicle?
A. Planet Motor Cars.
I was reading the wrong line -- I said "Planet," but I was reading the wrong line. "Palisades."
Q. Then who is listed as the purchaser in that document?
A. New York Motor Group.
Q. I'm going to hand you back Exhibit number 12. Who is listed as the prior owner for number 12?
A. Planet Motor Cars.
Q. Who is listed as the purchaser there?
A. Shahadat -- I can't pronounce that.
Q. And the last name?
A. Tuhin. T-U-H-I-N.
Q. The earlier-dated document -- we marked it as 13 -- indicates that the purchaser

is New York Motor Group. If you can just confirm that?

A. Correct.

Q. And the later-dated document, number 12, indicates that the owner who's selling the car is Planet Motors?

A. Prior owner was Planet Motors, yes.

Q. At any point did Planet Motors sell this car to New York Motor Group?

A. This was --

Q. I'm sorry, I misspoke. At any point did New York Motor Group sell this car to Planet Motors?

MR. SIMON: Could I see the third one? I think you've marked three of these; right?

MS. LINDERMAYER: Yes, but I haven't handed her the third one of those yet.

MR. SIMON: Oh, I'm sorry.

MS. LINDERMAYER: I'm not asking questions about it yet.

MR. SIMON: Okay, I was confused.

THE WITNESS: Ask the question again.

MS. LINDERMAYER: I asked it in a confusing way.

THE WITNESS: Yes.

MR. SIMON: This is 12 and 13, then.

Q. The earlier-dated exhibit, which is number 13, has New York Motor Group purchasing the vehicle?

A. Yes.

Q. And the later-dated exhibit, number 12, has Planet Motors as the owner of the vehicle?

A. Prior owner, yes.

Q. At any point are you aware of New York Motor Group selling this vehicle to Planet Motor Cars?

A. No. New York Motor Group sold it to Tuhin.

Q. Where does it say that?

A. Right there. [Indicating] It says "Owner Information." This is one of the DMV paperwork that I did. "Dealer" is New York

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Motor Group. And the purchaser is "Tuhin." So New York Motor Group sold it to Tuhin.

Q. And it purchased it from?

A. Planet Motors.

Q. And where does it say that Planet Motor sold the car to New York Motor Group?

A. On Exhibit 13, it said "Dealer Information: Planet Motor." And the purchaser was New York Motor.

Q. I'm going to hand you Exhibit number 14. Do you recognize your handwriting anywhere on that document?

A. No.

MR. LANE: Can I just state for the record that we are going to pass the witness to Mr. Grossman.

Lance, wait a minute. We're going to pass the witness to Mr. Grossman, but we do reserve the right to any follow-up, if necessary. Now we will take a short break. Thanks.

(A brief recess is taken from 5:00 to 5:10 p.m.)

oOo

Nada Smith

EXAMINATION BY MR. GROSSMAN:

Q. Good afternoon, Ms. Smith. My name is Lance Grossman. I'm the attorney for M&T Bank in three of these cases that are now pending in federal court, in Eastern District of New York.

I'm going to ask you some additional questions regarding these lawsuits. If at any time you don't understand my question, I would ask you to so advise me and I will do my best to rephrase the question. If you answer the question, I will interpret that to mean that you understood the question and I will move on to the next question. Do you understand that?

A. Yes.

Q. Other counsel have given you the ground rules with respect to the court reporter: Answer verbally and not with your hands or head movements. You still understand that; correct?

A. Yes.

Q. We have been going for a number of hours, and I do want to make sure that you are

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fully capable and you feel comfortable to continue with the deposition at this time.

A. Yes.

Q. To pick up on some of the questions that were asked by some of the counsel prior, I'm just going to ask you some follow-up questions.

You stated that when you would issue a refund you always asked your father for permission to do that?

A. Yes.

Q. And you stated that there would be no refunding after financing had been completed?

A. I'm sorry, can you repeat that?

Q. I sure can. Would you give refunds to anyone after financing had been completed?

A. If they decided that they didn't want the vehicle?

Q. Yes.

A. Yes.

Q. Do you remember that happening at all?

Nada Smith

A. Yes.

Q. You mentioned the financing. Do you know what "financing" means; to purchase an automobile?

A. Yes. I have never done it, I don't know too much about it, but I'm familiar with it.

Q. What do you understand financing of an automobile to mean?

A. You get a loan on a car.

MR. SIMON: Talk louder.

A. You get a loan on a car.

Q. From a bank?

A. From a bank, yes.

Q. Can you tell me during the time that you worked at New York Motor Group what banks New York Motor Group worked with?

A. I know M&T was one of them. I'm not sure about the other ones.

Q. They showed you a document with the name "Santander" --

A. Yes.

Q. -- on it?

A. Santander, yes.

Nada Smith

Q. Is that another one --

A. Yes.

Q. Let me just finish the question so that the record is complete.

Santander was one of the other banks that New York Motor Group would use to help customers finance cars?

A. Yes.

Q. Did you ever hear of a company called "Capital One Auto Finance"?

A. Yes.

Q. Was that another company that you would give business to?

A. We used them in the very beginning but then we stopped using them.

Q. Do you know why you stopped using them?

A. I'm not sure. It was after -- I know it was a little after Angel left that we didn't use Capital One anymore.

Q. Other than Capital One --

MR. SIMON: Can I interrupt? I'm getting confused. She uses an expression, "we" -- like "we didn't use," or whatever. Who?

THE WITNESS: I'm sorry.

MR. SIMON: I mean, are you referring to New York Motor Group?

MR. GROSSMAN: Counsel, with all due respect --

MR. SIMON: I think she's just confusing names.

MR. GROSSMAN: Counsel, I appreciate that. But I also said that if she didn't understand a question, to advise me.

MR. SIMON: Don't confuse them.

THE WITNESS: Okay.

MR. SIMON: Answer the question accurately, and listen to the question; okay?

THE WITNESS: Okay.

MR. SIMON: He wants to know who the dealer was.

MR. GROSSMAN: I will rephrase it.

MR. SIMON: Okay.

Q. Again, if you don't understand, I'm not here to trick you. Just let me know and I will do my best to rephrase it.

A. Okay.

Q. Other than Capital One Auto Finance, Santander, and M&T Bank, are you aware of any other banks or financial institutions which New York Motor Group used to help their customers obtain auto financing?

A. I know that Angel used Capital One for a little bit, for the time that he was there. And after he left, Julio, I think -- I don't know how much longer he was using it. And I know Julio was using M&T and Santander. I don't know if he was using any other banks or not.

Q. So you don't know if there were any others other than those two?

A. I don't know.

Q. Do you know how the financing process works?

A. Not really.

Q. You said that you were the one that was responsible for taking the file jacket and actually putting it in the file cabinet?

A. After Julio or Angel -- mostly

Julio, because I barely worked with Angel. After Julio was done with his folder he would either bring it to the desk out in the open office, or he would bring it toward me and tell me to file it.

Q. Do you know approximately how many cars were financed per day at New York Motor Group during the time that you worked there?

A. No, I can't -- I don't know.

Q. Do you have an estimate, a range?

A. I have no idea.

Q. Do you know if it was more than one or less than ten per day?

A. I don't know, because I wasn't -- I didn't do any financing, so I wouldn't know.

Q. Do you know how many cars were purchased per day at New York Motor Group, approximately, during the time you worked there?

A. Somewhat, yes.

Q. Can you tell me?

A. It wasn't once a day, definitely not. Probably three or four a week.

Q. That were purchased from New York

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Motor Group?

A. Depending. Some weeks there will be nothing sold. And we'll have a week that there will be four sold, or whatever the number is. So I don't know really how many. But they will have a week that they sell something, and then they won't.

Q. Do you know how many of those purchases required financing?

MR. GROSSMAN: Strike that.

Q. Do you know how many of those purchases were paid outright in cash?

A. No.

Q. Do you know how many of them were financed?

A. No. But the vehicles that were paid in cash, I received the money and I deposited the money in the bank. I'm not sure how many were sold, honestly. I can't tell you. It didn't happen often, though.

Q. Did you ever hear anyone at New York Motor Group ever say you can't purchase a car without financing?

A. No.

Nada Smith

Q. Did you ever hear anyone, including Julio Estrada, ever tell any customers that they had to obtain financing in order to purchase a car?

A. No.

Q. Was your father involved with the financing in any way?

A. No.

Q. It would just be either Angel or --

A. Julio.

Q. Or Julio.

You said that there came a point in time that you would sometimes fax documents to financial institutions?

A. Julio sometimes asked me to fax stuff over to whatever bank it was. It didn't happen often. It was here and there that Julio had asked me to do stuff like that.

Q. You stated that you actually left New York Motor Group because there was becoming a large amount of complaints coming in about Julio?

A. Well, I had a lot going on myself.

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I was planning a wedding and I had a lot of things going on.

Q. Do you remember if any of the complaints that you heard were from any customers who said, "I was told I had to obtain financing to purchase this car, and I did not want to obtain financing"?

A. No.

Q. Did your father or anyone at New York Motor Group ever explain to you how a customer would go about obtaining financing for an automobile?

A. No.

Q. One of the other attorneys prior to me asked you a question about if you've ever heard of the term, "Dealertrack"?

A. Yes.

Q. Do you have any information on what Dealertrack is in relation to financing of an automobile?

A. I know -- the reason why I know about Dealertrack is because I've seen a credit ap and it said "Dealertrack" on it. So my guess is that's the system they used to submit

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credit aps or put in credit aps. I don't know how it works.

Q. Did Julio ever explain Dealertrack to you?

A. No.

Q. Did you ever personally speak to anyone at M&T Bank?

A. I know a representative from M&T Bank. I know him through my father, though.

Q. Did you ever speak to him?

A. Yes.

Q. How many times?

A. A few times.

Q. What about Santander? Did you ever speak to anyone at Santander?

A. No.

Q. What about Capital One?

A. No.

I'm sorry, back to your question about pricing -- not the price, the financing. I know that a salesperson had explained -- I was just walking by and I overheard the salesperson explaining to the client that came in, the client came in on the internet price

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and wanted to buy the car for cash with the internet price. The salesperson explained to him that the only way he'll get the internet price is if he finances. That's the only thing that I heard.

Q. How many times did you hear that?

A. Once or twice. But that's the only thing that I heard. But I never heard them saying -- I never heard a client saying, "Oh, I don't want to finance. That's the only way that I can purchase the vehicle."

Q. So this would be with respect to an internet price?

A. Yes. If the client -- to my acknowledgment, the salesperson told the client that the only way he would get the price of the vehicle is if he would finance through the bank -- or whatever it is.

Q. Did they ever say which bank?

A. No.

Q. Did you ever hear anyone from M&T Bank ever say that in order for someone to purchase a car and obtain financing from them that they had to finance through M&T Bank?